

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower taxes: The provisions of this HJR will allow homeowners to move to a new homestead and receive a lower assessment for property tax purposes than under current law, thereby reducing the amount of property taxes they would otherwise pay.

Empower families: A number of Floridians have stated that they cannot move to another home, because of the increase in taxes that will occur when they move. The provisions of this HJR will remove that impediment.

B. EFFECT OF PROPOSED CHANGES:

CURRENT SITUATION

Save Our Homes

In 1992, Florida voters approved an amendment to s. 4, Art. VII of the State Constitution which is popularly known as the Save Our Homes amendment. Beginning with the 1994 tax roll, this amendment limited the annual increase in assessments of homestead property to the increase in the Consumer Price Index or 3 percent, whichever is lower. The Save Our Homes limitation first applied to the January 1, 1995 assessment.

After any change in ownership, as provided by general law, homestead property must be assessed at just value as of January 1 of the following year. Thereafter the property is subject to the Save Our Homes assessment limitation. New homestead property must be assessed at just value as of January 1 of the first year the property owner establishes homestead. Thereafter the property is subject to the Save Our Homes assessment limitation. Changes, additions, reductions, and improvements to homestead property are assessed as provided by general law, but after its initial assessment this property is subject to the Save Our Homes assessment limitation. If homestead status is terminated the property is assessed at just value.

Purpose of the Save Our Homes Amendment

In *Smith v. Welton*,¹ the First District Court of Appeal said:

The purpose of the amendment is to encourage the preservation of homestead property in face of ever increasing opportunities for real estate development, and rising property values and assessments. The amendment supports the public policy of this state favoring preservation of homesteads. Similar policy considerations are the basis for the constitutional provisions relating to homestead tax exemption, exemption from forced sale, and the inheritance and alienation of homestead.

Impact of Save Our Homes

In the twelve years since Save Our Homes first limited the assessment of homestead property, its impact on the assessed value of this property has far exceeded the original expectations of such impact. In 1997, the second year of assessment limitations, Save Our Homes reduced the statewide assessed value of homestead property by 3 percent. In 2006, Save Our Homes reduced homestead

¹ 710 So. 2d 135, 137 (Fla. App. 1998)

just value by more than 38 percent. The \$405 billion reduction from Save Our Homes in 2006 equals approximately 25 percent of total taxable value.

Homestead Exemption

Subsection 6(a), Art. VII of the Florida Constitution provides that every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation up to the assessed value of five thousand dollars. Subsection 6(b) provides that only one exemption shall be allowed to any individual or family unit. Subsections 6(c) and (d) provide that under certain conditions the homestead exemption is \$25,000, which is, in fact, the effective homestead exemption. Subsection (f) provides that, by local option, an additional homestead exemption of up to \$50,000 is available to low-income seniors, and subsection (g) provides an ad valorem tax discount for homestead property owned by disabled veterans who were Florida residents at the time they entered military service.

In 2006 there were 4,368,937 homesteads in Florida, and the homestead exemption reduced the 2006 tax roll by \$108.9 billion.

PROPOSED CHANGES

This HJR, if approved by the voters, would allow homeowners to transfer the accumulated benefit they have received from the Save Our Homes Amendment to a new homestead established within one year of vacating the old homestead. This benefit is referred to as the "Save Our Homes differential") and is the difference between the homestead property's just value as determined by the Property Appraiser and the property's assessed value. The ability to transfer the Save Our Homes differential is commonly referred to as Save Our Homes "portability".

The HJR provides that when a homeowner establishes a new homestead within two years of selling, or transferring a homestead property, or within two years of vacating a prior homestead, the newly established homestead shall be assessed at less than just value, as provided by general law. The difference between the new homestead's just value and its assessed value may not exceed the amount of the differential that existed in the previous homestead. Also, the amount of the differential that can be transferred is limited to the amount that will reduce the assessed value of the new property to an amount equal to the assessed value of the old property. A homeowner who establishes a new homestead with an assessed value that is equal to or lower than the assessed value of the previous homestead will not be able to transfer any differential amount.

Three examples using a home with a just value of \$500,000 and \$300,000 assessed value (a \$200,000 Save Our Homes differential) follow:

- (1) If the homeowner establishes a new homestead with a just value of \$500,000, the just value of the new home will be reduced by \$200,000 to establish an assessed value of \$300,000.
- (2) If the homeowner establishes a new homestead with a just value of \$400,000, the assessed value of the new home will be \$300,000. In this instance the homeowner could only used \$100,000 of the differential.
- (3) If the homeowner establishes a new homestead with a just value of \$250,000, the assessed value of the new home will be \$250,000. Because the assessed value of the new homestead is lower than the assessed value of the previous homestead, the homeowner could not use any of the differential.

C. SECTION DIRECTORY:

Not applicable to Joint Resolutions

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has not considered this issue this year.

The provision of the HJR will have the effect of reducing the statewide taxable value of property from levels that would otherwise have occurred, thereby reducing the amount of revenue that can be raised at a given millage rate. To the extent that a taxing authority is at its millage cap, the taxing authority's revenues will be lower than under current law.

Staff estimates that the provisions of this HJR will reduce statewide taxable value over the next five years by the amounts shown in the following table. Assuming current millage rates, this reduction in taxable value would result in tax collections being reduced by the amounts shown below.

YEAR	TAXABLE VALUE REDUCTION	TAXES @ 18.46 mills
2009	\$11.8 billion	\$218.1 million
2010	\$25.1 billion	\$464.4 million
2011	\$39.7 billion	\$733.1 million
2012	\$55.6 billion	\$1,026.0 million
2013	\$72.918 billion	\$1,346.0 million

If future millage rates are reduced by other legislative action, the tax impacts shown above will be lower.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Homeowners who move to another house which becomes their homestead will pay lower taxes in their new home than they otherwise would have.

D. FISCAL COMMENTS:

A number of Floridians have stated that they cannot move to another home, because of the increase in taxes that will occur when they move. This situation has been referred to as the "lock-in effect." The provisions of this HJR will remove that impediment.

Removing the lock-in effect will have a positive indeterminate impact on state revenues from real estate related transactions.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable to Joint resolutions

2. Other:

In 2006, the Office of Economic and Demographic Research (EDR) contracted with Walter Hellerstein, W. Scott Wright and Charles C. Kearns of Sutherland Asbill & Brennan LLP for a legal analysis of the most commonly referenced legislative proposals regarding property taxes. The analysis focused primarily on the federal constitutional issues raised by proposed alternatives to the Save Our Homes that were filed during the 2006 legislative session.²

The analysis concludes that portability may provide opportunities for legal challenges based on federal constitutional grounds under the Commerce Clause, the "Interstate" Privileges and Immunities Clause, and the Right to Travel. The last paragraph of the portability analysis concludes as follows:

"First, the scope of the favoritism for long-term over newly arrived residents is much broader under the portability provisions than under the existing Save Our Homes assessment limitation because the favored class includes a much broader class of long-term residents, namely, all long-term homestead owners including those who have acquired new homesteads through intrastate moves. Second, the magnitude of the favoritism for long-term over newly arrived residents is much greater under the portability provisions than under the existing Save Our Homes assessment limitation, because the aggregate amount of relative underassessment for long-term residents increases as they carry their preexisting assessment limitation benefit from homestead to homestead. As a consequence, newly arrived homestead owners will have relatively greater property tax burdens as compared to long-term homestead owners under portability than under the existing Save Our Homes assessment limitation. Third, the portability provisions by their very nature are more closely tied to the status of a *person* as a resident rather than to the status of the property as a homestead. In effect, long-term resident homestead owners are given personal rights to tax reduction that they may carry with them wherever they move in Florida whereas newly arrived residents have no such personal rights. In our judgment, all of these factors provide substantial grounds for distinguishing the portability provisions from the existing Save Our Homes assessment limitation on right to travel grounds, and they suggest why a right to travel challenge to the existing Save Our Homes assessment limitation would be considerably more difficult than a similar challenge to the portability provisions."

If portability is adopted and later held to be unconstitutional, the discrimination or burden it creates will have to be eliminated on a prospective basis and may have to be remedied through meaningful backward-looking relief on a retrospective basis. This relief could entail either a refund or any other remedy that cures the discrimination, e.g., taxing the previously favored class on a retroactive basis.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

² The analysis is included as Appendix B to Florida's Property Tax Study Interim Report, Legislative Office of Economic and Demographic Research, February 15, 2007, and can be found at:

<http://edr.state.fl.us/property%20tax%20study/Ad%20Valorem%20iterim%20report.pdf>

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D. STATEMENT OF THE SPONSOR

None

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 20, 2007, the Policy and Budget Council adopted an amendment to PCB PBC 07-09 that changed from 1 year to 2 years the time that homeowners have to establish a new homestead in order to be able to transfer their Save Our Homes benefit to the new homestead. The analysis has been changed to reflect the amendment.